IN THE

Supreme Court of the United States

October Term, 1975

No. 75-90

GENERAL TELEPHONE COMPANY OF OHIO,
Petitioner,

v.

GENE SLAGLE, INC.,
and
THE PUBLIC UTILITIES COMMISSION OF OHIO,
Respondents.

BRIEF IN SUPPORT OF WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO

Now comes the Public Utilities Commission of Ohio (Respondent Commission) by its Counsel William J. Brown, Attorney General of Ohio, and supports the Petition of the General Telephone Company of Ohio (Petitioner) for a writ of certiorari to review the judgment of the Supreme Court of the State of Ohio in the case of *Gene Slagle, Inc. v. Pub. Util. Comm.* (1975) 41 Ohio St. 2d 44. Since Respondent Commission supports the petition it is filing this Brief pursuant to U.S. Sup. Ct. Rule 21 (4), 28 U.S.C. This filing has been made as promptly as possible as required by said rule. The Statement of the Case outlining the procedural history of this matter as presented by Petitioner is acceptable to Respondent Commission.

REASONS FOR GRANTING THE WRIT

Respondent Commission believes that the Opinion of the Supreme Court of Ohio in *Gene Slagle, Inc., supra,* has such a significant impact on utility regulation, that it would certainly be appropriate for this Court to review that Opinion.

The present state of law in Ohio, since the Ohio Supreme Court's decision in *Gene Slagle, Inc., supra,* is such that Ohio's public utilities may well be faced with a serious dilemma when deciding whether to appeal a rate order of the Respondent Commission, which order granted only a portion of the rate relief sought by the public utility. If the appeal is taken and the public utility is successful on appeal, under *Gene Slagle, Inc., supra,* "those rates in effect prior to the (appealed) order (are) reinstated by operation of law, and (continue) in effect until further order of the (Respondent Commission)". If the appeal is not taken, the public utility is constrained to accept a rate increase which it may believe to be insufficient and which the Supreme Court of Ohio might find to be unlawful.

The issues raised by the Petition do seem to be of a substantial Federal nature. The Supreme Court of the State of Ohio's decision in *Gene Slagle, Inc., supra,* draws into question an Ohio public utility's right to due process under the Fourteenth Amendment of the United States Constitution. Whether that decision would be applicable in jurisdictions other than Ohio, Respondent Commission cannot say. However, future decisions of the Supreme Court of the State of Ohio on appeals from rate orders of Respondent Commission will be subject to the effect of the decision in *Gene Slagle, Inc., supra.* Because this decision will have continuing effect at least within Ohio and because the effect could be constitutionally infirm Respondent Commission believes that the Petition should be granted.

Although Respondent Commission would normally welcome a ruling of the Supreme Court of Ohio which might have the effect of finalizing rate orders of Respondent Commission by making appeals by the public utility involved less likely, it does not believe that such finalizing should come at the expense of even potential infringement of constitutionally protected rights. It is for this reason that Respondent Commission fully supports Petitioner's efforts to obtain review of the decision of the Supreme Court of Ohio to determine whether that decision is constitutionally infirm.

Respondent Commission has not, in this Brief, addressed the merits of issues raised by Petitioner. Rather, this Brief is limited to reasons why Respondent Commission believes this Court should grant the Petition before it. Should this Court grant the Petition and review the decision of the Supreme Court of the State of Ohio, Respondent Commission will fully participate and will at that time address itself to the merits of the case.

CONCLUSION

Respondent Commission supports the Petition for a writ of certiorari to review the judgment of the Supreme Court of the State of Ohio in the case of *Gene Slagle, Inc. v. Pub. Util. Comm.* (1975) 41 Ohio St. 2d 44 and respectfully urges this Court to grant such Petition.

Respectfully submited,

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